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IN THE

Supreme Court of the United States

OCTOBER TERM, 1985

ILLINOIS PRO-LIFE COALITION, INC., III,

Petitioner,

v.

LOUIS G. KEITH, M.D., et al.,

Respondents.

On Petition For Writ Of Certiorari To The United States Court Of Appeals For The Seventh Circuit

BRIEF FOR THE ATTORNEY GENERAL OF THE STATE OF ILLINOIS AS AMICUS CURIAE IN SUPPORT OF PETITIONER

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INTEREST OF THE AMICUS CURIAE

This case presents significant questions relating to intervention of interested parties in the area of the constitutionality of abortion-related statutes. The issues of constitutional law raised in these cases are novel and complex. Your amicus supports the intervention petitions of groups who have expressed identifiable and specific legal interest in the area of abortion-related statutes.

ARGUMENT

THIS COURT SHOULD GRANT THE PETITION FOR CERTIORARI BECAUSE THE COURT OF APPEALS FAILED TO ACKNOWLEDGE THE DISTINCT INTERESTS OF THE PROPOSED INTERVENOR AND THE SPECIAL EXPERTISE OF COUNSEL FOR ILLINOIS PRO-LIFE COALITION, INC., III IN REPRESENTING THOSE INTERESTS.

The Illinois Pro-life Coalition, Inc., III (IPC), is a not-for-profit corporation whose By-Laws provide that it is organized to promote the basic human right to life through formulating, supporting and lobbying for legislation that provides protection for unborn children and to present alternatives to abortion and infanticide by supporting groups and individuals that offer such alternatives. In the case at issue, IPC was actively involved in the legislative process on behalf of House Bill 1399 which amended the Illinois Abortion Law of 1975.

In recent years, the Office of the Attorney General of the State of Illinois has been called upon to defend numerous challenges to the constitutionality of the Illinois Abortion Law of 1975, and various amendments thereto. This type of litigation involves serious legal issues which are the subject of great public debate and concern. The issues of constitutional law raised in these cases are invariably complex and novel, and, therefore, this Court can benefit by having parties with a wide range of interests present arguments in such cases. Because of the separate interests of various "pro-life" groups and to assure that the full range of arguments are heard by this Court, amicus still supports the intervention petitions of such groups who have desired to participate as parties. We

would also support the intervention of groups expressing contrary views if they too present a specific identifiable interest in the subject matter of a particular piece of litigation.

In the case at issue here, we supported the petition of the Illinois Pro-life Coalition, Inc., III to intervene in the case before the district court on at least two occasions. We believe that both the district court and the court of appeals erred in holding: 1) that IPC does not have a sufficiently different interest from that of the Attorney General to allow it to intervene in this litigation; and 2) that IPC's separate and distinct interests are adequately represented by this office.

The instant case presents issues that require special expertise in a complex and novel area of constitutional law. The public interest groups who consistently mount challenges to state regulation of abortion-related statutes are seasoned advocates in this field and have a strong personal commitment to their position. Each of the various groups supporting such regulatory legislation is equally expert and interested, but each holds a different opinion and represents a different interest. Therefore, each should be allowed to participate through intervention in litigation which will determine the constitutionality of laws with which they have strong identity. The holdings of this Court establish that the "interest" criteria for intervention pursuant to Rule 24(a)(2) of the Federal Rules of Civil Procedure is to be broadly construed in public law cases such as this. *Cascade Nat. Gas v. El Paso Nat. Gas*, 386 U.S. 129 (1967).

Effective and fair litigation of the legal issues in the abortion controversy requires that appropriate groups or individuals on all sides of the abortion controversy who

petition to intervene be allowed to do so. This lawsuit is an archetype of public law litigation. One of the principal contenders in the struggle, the American Civil Liberties Union, is in court as the representative of abortion-performing doctors arguing that HB1399 is facially invalid. The other principal contender, IPC, provided each legislator with a detailed constitutional analysis of the bill prior to enactment and lobbied extensively in its favor. IPC has been involved in numerous cases across the country in which the constitutionality of abortion-related statutes have been in question. The involvement of such groups on both sides of the matter ensures a more thorough presentation of these complex legal issues before the trial court. In this case, the IPC should be allowed to intervene so that both the advocates and opponents of abortion who have expressed identifiable and specific legal interests will be fully represented.

Giving deference to one seeking access to this Court is not advocating the intervention of those with frivolous interests. However, eliminating those who fail to survive the procrustean rule places form over substance. Where intervention of a party does not delay the proceeding and that party has exhibited a concrete interest in the litigation, the party seeking intervention should be granted access. In fact, the case at issue here will benefit greatly from such an intervention.

CONCLUSION

For the foregoing reasons, your *amicus* respectfully submits that certiorari should be granted, and that the judgment of the court of appeals should be reversed so that IPC can be permitted to intervene in this case.

Respectfully submitted,

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